

United States District Court

for the

Eastern District of New York

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

Case Number: **0207 1:05CR00248**

Name of Offender: **Michael Smiddy**

Name of Sentencing Judicial Officer: **The Honorable Nina Gershon**

Date of Original Sentence: **October 31, 2005**

Original Offense: **Possession of Child Pornography**

Original Sentence: **Imprisonment - 72 months
Supervised Release - 36 months**

Type of Supervision: **TSR**

Date Supervision Commenced: **1/20/2011**

PETITIONING THE COURT

- ☐ To extend the term of supervision for years, for a total term of years.
☒ To modify the conditions of supervision as follows:

The defendant is not to use a computer, Internet capable device, or similar electronic device to access pornography of any kind. This includes, but is not limited to, accessing pornographic websites, including websites depicting images of nude adults or minors. The offender shall not use his/her computer to view pornography stored on related computer media, such as CD's or DVD's, and shall not communicate via his computer with any individual or group who promotes the sexual abuse of children. The defendant shall also cooperate with the U.S. Probation Department's Computer and Internet Monitoring program. Cooperation shall include, but not be limited to, identifying computer systems, Internet capable devices, and/or similar electronic devices the defendant has access to, and allowing the installation of monitoring software/hardware on said devices, at the defendant's expense. The defendant shall inform all parties that access a monitored computer, or similar electronic device, that the device is subject to search and monitoring. The defendant may be limited to possessing only one personal Internet capable device, to facilitate our department's ability to effectively monitor his/her Internet related activities. The defendant shall also permit random examinations of said computer systems, Internet capable devices, similar electronic devices, and related computer media, such as CD's, under his/her control. As part of the Computer and Internet Monitoring program, the defendant is prohibited from sending/receiving images, video, or audio (MMS - multimedia messaging service) via a cellular telephone or other capable device as directed by the probation department. The defendant is required to notify their mobile telephone provider to prevent their account from sending/receiving images, video, or audio (MMS) and provide documentation to the probation department as proof of this requirement.

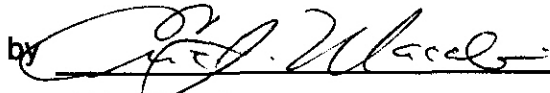
Name of Offender: Michael Smiddy

Request for Modifying the Conditions or
Terms of Supervision with Consent of the Offender
Case Number: 0207 1:05CR00248-001


CAUSE

The Probation Department has updated our Computer and Internet Monitoring condition to include a ban on picture/video messaging via cellphone or other Internet capable devices. This technology, referred to as "MMS" or multimedia messaging service, utilizes the Internet to transmit data that we are currently unable to monitor. The Probation Department believes this prohibition will assist in the offender's rehabilitation and progress in sex offender treatment. Nevertheless, the offender remains capable of communicating via monitored e-mail, conversing telephonically, or with traditional text messaging. As evidenced by the attached Probation Form 49 dated January 20, 2011, the offender waived his rights to a hearing and accepted the proposed modification.

Respectfully submitted,

by 
Eric Macolino
Sr. U.S. Probation Officer
Date: 1/25/11

Approved:


SUSPO

THE COURT ORDERS:

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above
- ☒ The Modification of Conditions as Noted Above
- ☐ Other


Signature of Judicial Officer

1/27/11
Date

PROB 49
(NYEP-8/1/07)

United States District Court
EASTERN DISTRICT OF NEW YORK

**Waiver of Hearing to Modify Conditions
of Probation/Supervised Release or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and the assistance of counsel before any unfavorable change(s) may be made in my conditions of Probation and/or Supervised Release or before my period of supervision can be extended. By assistance of counsel, " I understand that I have the right to be represented at a hearing by counsel of my choosing if I am able to retain counsel. I also understand that I have the right to request that the Court appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel. "

I hereby voluntarily waive my statutory right to a hearing and to the assistance of counsel. I also hereby agree to the following modification (s) of my conditions of Probation and/or Supervised Release or to the proposed extension of my term of supervision:

The defendant is not to use a computer, Internet capable device, or similar electronic device to access pornography of any kind. This includes, but is not limited to, accessing pornographic websites, including websites depicting images of nude adults or minors. The offender shall not use his/her computer to view pornography stored on related computer media, such as CD's or DVD's, and shall not communicate via his computer with any individual or group who promotes the sexual abuse of children. The defendant shall also cooperate with the U.S. Probation Department's Computer and Internet Monitoring program. Cooperation shall include, but not be limited to, identifying computer systems, Internet capable devices, and/or similar electronic devices the defendant has access to, and allowing the installation of monitoring software/hardware on said devices, at the defendant's expense. The defendant shall inform all parties that access a monitored computer, or similar electronic device, that the device is subject to search and monitoring. The defendant may be limited to possessing only one personal Internet capable device, to facilitate our department's ability to effectively monitor his/her Internet related activities. The defendant shall also permit random examinations of said computer systems, Internet capable devices, similar electronic devices, and related computer media, such as CD's, under his/her control. As part of the Computer and Internet Monitoring program, the defendant is prohibited from sending/receiving images, video, or audio (MMS - multimedia messaging service) via a cellular telephone or other capable device as directed by the probation department. The defendant is required to notify their mobile telephone provider to prevent their account from sending/receiving images, video, or audio (MMS) and provide documentation to the probation department as proof of this requirement.

Witness: 
U.S. Probation Officer

Signed: 
Probationer or Supervised Releasee


Date